

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015010122

ORDER DENYING REQUEST FOR
STAY PUT

On January 5, 2015, Student filed a letter requesting stay put. No opposition was filed by Los Angeles Unified School District (LAUSD) or Vaughn I.M.T. Next Century Learning (Vaughn).

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

For a student who has not yet been determined eligible for special education, stay put protections apply only if the student engaged in behavior that violated a rule or code of conduct of the local educational agency, and the local educational agency is deemed to have had knowledge that the student was a child with a disability before the occurrence of the behavior that prompted the disciplinary action. (20 U.S.C. § 1415(k)(5)(B).) The local educational agency is deemed to have had knowledge that a student was a child with a disability if any of the following occurred before the behavior that caused the disciplinary action:

- (1) The parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

(2) The parent of the child has requested an evaluation of the child pursuant to title 20 United States Code section 1414(a)(1)(B); or

(3) The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, pending the result of the evaluation, the child shall remain in the educational placement determined by school authorities. (20. U.S.C. § 1415(k)(5)(D)(ii).)

DISCUSSION

Student's due process hearing request (complaint) alleges that Student was suspended from Vaughn despite Parent's meetings with school personnel concerning Student's mental health issues, that Parent requested Student be assessed for special education eligibility, and that District scheduled a suspension after Parent requested that the hearing be continued pending an assessment. In Student's letter requesting stay put, Parent asserts that Student has been out of school since November 19, 2014, and seeks an order that Student be returned to Vaughn or another temporary placement pending the expedited hearing in this matter. Parent offered no evidence as to whether an evaluation is in progress.

Student was not identified as a child with a disability prior to the suspension. Whether District had knowledge that Student was a child with a disability before the occurrence of the behavior that prompted the disciplinary action, and whether Student is entitled to the protections of 20 United States Code section 1415(k)(5), including a return to her prior placement or another placement, is an issue for this expedited proceeding. Student's placement pending the outcome of the expedited due process hearing is the disciplinary placement determined by Vaughn, which in this case is suspension.

Accordingly, Student's request for stay put is denied.

IT IS SO ORDERED.

DATE: January 16, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings